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No. 02-1041

Informal Brief of Appellant

DISCLOSURE

DRAFT

DUE

11/14/01
12/3/01
12/17/01

Read the Guide for Pro Se Petitioners and Appellants before completing this form. Attach a copy of the final decision or order of the Board or Commission. Answer the following questions as best you can. Your answers should refer to the decision or order you are appealing where possible. Use extra sheets if needed.

1. Have you ever had another case in this court? Yes ☒ No ☐ If so, state the case and number of each case.

2. Did the Board or Commission incorrectly decided or fail to take into account any facts? ☒ Yes ☐ No If so, what facts? (Refer to paragraph 7 of the Guide.)

The Patent office judge Barry did not consider the errors made by two examiners, Kim. J and Liang. R, which are presented in the following material in a chronologic order.

1. On 1-28-1996 we applied for a utility patent for our idea presented on page 1. The claim was: **"This computer mouse is characterized by using a magnet, to press the rubber magnetic ball against the coordinates X and Y shafts"**.

2. On 2-27-97 the examiner Kim. J did a final rejection of our invention (page 2-6), being identical with Toyoda's invention presented on page 7 and 8, and having inside of mouse three contacts the shafts 20X, 20Y and the bearing 52. It contains also the magnet 49 which keeps the ball from not falling when the pen is not in touch with the table. Our magnet is replacing their bearing 52. Toyoda does not present any intention to replace the bearing 52.

3. On 12-16-97 the examiner Kim. J did the second final rejection, as being similar with prior art because the above claim does not say that there are only two contacts inside of the mouse. I quote "Applicant states that the prior art does not teach the present invention which has just two contacts as is seen in Figure 2, **but it's not recited in the claim that there are only two contacts.**" (see page 9)

4. On 1-6-98 I sent a new specification with the following claim: (page 10)

A computer mouse having the (rotatable) rotating ball with two contacts inside of it, comprising: a magnet which attracts the mouse magnetic core ball and rubber outer layer, without touching the ball, against the coordinates x and y shafts, in a plane parallel with the shafts x and y plane. We introduce the direction of the force because Toyoda's magnet exercises a force perpendicular on the 20X, 20Y and bearing 52 shafts plane.

5. On 2-05-98 the examiner Liang. R did not allow the new specification and claim to be entered, **because it introduces new matter** (see page 11).

6. On 5-8-98 corrected on 5-8-98 we appealed before the Board of Patents Appeals and Interferences (see page 12). The appeal was rejected on 7-16-2001.

7. On 7-21-2001 I filed for reexamination of the appeal. We have got the final rejection based on the fact that Toyoda's invention has a magnet like ours, so they are similar. The Judge Barry wrote: **"Because the claim uses the transitional term 'comprising,' however, it does not preclude additional contacts."**(see pages 13-17) First, the idea of this invention is to eliminate one contact to reduce the ball friction, and that is clear from the beginning to end. Second, the claim using the word "comprising" was not entered.

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8. The Judge Berry wrote on page 15 "The claim recites neither "the case sliding on the table" nor that "the table contact and the x and y contacts will create a triangle to support the ball" as argued by the appellants. Accordingly, we are not persuaded by the argument."

The invention specification presented on page 1 is written: (line 2 , 3 and 4) "The existing Mouse use a mechanical schematic with a rubber ball which will rotate the X and Y coordinate shafts, the Mouse is moved on a surface". This text shows that the mouse is sliding on the surface. Otherw the ball will not rotate and will not rotate the X and Y coordinate shafts.

I did not introduce the idea of sliding in the claim because the existing mouse (prior art) also slide on table. My claim contain what is strictly different than the prior art and that is: The elimination of the wheel H (Page 1 Fig1) and replacing its force with the force of a magnet, acting in the same direction the force of wheel H. (Page 1 Fig2) In such a case the ball will have inside of the mouse only 2 conta X and Y (no more no less) Any idea having more than 2 contacts inside of the mouse will not be my idea and the friction and problems of the mouse ball will increase.

3. Did the Board or Commission apply the wrong law? ☒ Yes ☐ No If so, what law should be applied?

The PO used the law U.S.C. 103(a) as a non-obvious subject matter instead of the law 38 U.S.C 101 Inventions patentable: "Whoever invents or discovers any new or useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent thereof, subject of the conditions and requirements of this title."

Unfortunately the examiners stated that: "the mouse having two contacts inside of it" is different than "the mouse having only two contacts inside of it". The judge Berry said that "the mouse comprising two contacts X and Y" is the same with "the mouse comprising the contacts X , Y, Z, U and so on."

I do not pretend that my words used in the claim are the best but the whole specification and drawing are very clear and obvious, allowing to see the idea. I was willing to do any changes to clarify the idea, but they did not cooperate.

4. Did the Board or Commission fail to consider important grounds for relief? ☒ Yes ☐ No If so, what ground?

My Computer mouse contain 2 and only 2 contacts of the ball inside of the mouse. All prior art, including Toyoda's pen, contain 3 contacts inside of the ball. All mouse, included mine, have the ball in contact with the table also.

5. Are there other reasons why the Board's or Commission's decision was wrong? ☐ Yes ☒ No If so, what reasons?

6. What action do you want the court to take in this case?

To send the case back to patent Office and another examiner to reexamine it and if they will find another mouse having only two contacts inside of it, that means minimum friction for the ball, to oppose it. I will accept it. If no they must allow a patent for me.

7. Do you want to argue before the court in person? ☐ Yes ☒ No What are the reasons why argument will aid the court? (Refer to paragraph 15 of the guide.)

I do not have anything more to add before court. My idea is clear and obvious.

8. Do you intend to represent yourself? ☒ Yes ☐ NO If you have not filed a notice of appearance, indicate your full name, address, and telephone number.

9. I certify that a copy of this brief and any attachments was sent to Joseph Piccolo and Henry Sawtelle the attorney for appellee, at the following address:

Office of the Solicitor
P.O.Box 15667
Arlington, Virginia 22215

(Address is found on the Notice of appearance served on you by the attorney for the appellee. If you do not send a copy of this brief to the appellee, the court will not file the brief.)

11-03-01

Date



Appellant's signature

In addition to mailing a copy to the attorney for the appellee, mail an original and three copies of this informal brief and attachments to:

Clerk, United States Court of Appeals for the Federal Circuit
717 Madison Place, NW
Washington, DC 20439